

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

S1 10 CR 60 (JG)

-against-

MOHAMMED ZAZI

AFFIRMATION

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Justine A. Harris, Esq., hereby affirms as follows:

1. I am an attorney licensed to practice in the State of New York, and together with Deborah Colson, Esq., have been appointed pursuant to the Criminal Justice Act to represent Mohammed Zazi. I submit this affirmation in anticipation of the sentencing hearing, scheduled for February 10, 2012.
2. Ms. Colson and I filed a sentencing memorandum on January 23, 2012, and a supplemental letter to the Court on January 24, 2012. In both documents, we state that the government extended a plea offer to Mr. Zazi prior to trial that likely would have resulted in a non-incarceratory sentence. The government asserts that this is “incorrect.” (Gov’t ltr at 9 n. 2).
3. On January 28, 2010, Mr. Zazi was charged in this district in a one-count indictment alleging conspiracy to obstruct justice.
4. In May 2010, Ms. Colson advised me that the government had proposed that Mr. Zazi plead guilty to the visa fraud in exchange for dismissal of the obstruction of justice indictment.
5. In early June 2010, Ms. Colson and I traveled to Colorado to meet with Mr. Zazi. We spent many hours with Mr. Zazi over two days, during which we reviewed the discovery and discussed the plea offer.
6. On June 23, 2010, after returning from Colorado, Ms. Colson and I met with the assigned E.D.N.Y. prosecutors and an attorney from the Counterterrorism Section of the Department of

Justice. During the meeting, which took place at the Brooklyn U.S. Attorney's Office, we thanked the prosecutors for their generous plea offer and asked them to keep it open as long as possible. We also suggested that they consider a deferred prosecution.

7. On July 12, 2010, while the plea offer was still open, Ms. Colson and I brought Mr. Zazi to a reverse proffer with the assigned E.D.N.Y prosecutors and the same attorney from the Department of Justice who had been present for the June 2010 meeting. AUSA David Bitkower described the government's evidence against Mr. Zazi, as well as its case against Mr. Zazi's son, Najibullah. Mr. Bitkower assured Mr. Zazi that he understood that Mr. Zazi had not intended to help Al Qaeda but rather to assist his family.

8. On July 12 and July 13, 2010, Ms. Colson and I met independently with Mr. Zazi and again discussed the plea offer at length.

9. Mr. Zazi ultimately rejected the offer.

10. On September 29, 2010, at a status conference before Judge Dearie, AUSA James Loonam reported that the parties had negotiated "in good faith" but had been unable to reach an agreement. Mr. Loonam further announced the government's intention to file a superseding indictment against Mr. Zazi with additional charges. The superseding indictment was filed on November 29, 2010.

Dated: New York, N.Y.
 February 8, 2012

/s/
Justine A. Harris